

rejected under 35 U.S.C. §103 from Queisser et al. Claims 2 and 7-10 are rejected under 35 U.S.C. §103 from Queisser et al in view of Bolle et al U.S. Patent No. 5,546,475.

Applicants enclose a Declaration Under Rule 131 made by the inventors. It is respectfully believed that this Declaration obviates the rejections of all of the claims inasmuch as each rejection is based entirely or primarily upon the Queisser et al patent.

Reconsideration and withdrawal of the §102 and §103 rejections are respectfully requested.

Added claims 13-20 are provided to more particularly claim certain features of the invention as initially filed. Support for these claims are found, for example, on page 3 which specifies that illumination can be from above, or below or both. These claims emphasize the embodiment where the illumination is from below. Support is also found in the drawing as filed. These passages also support the claim language wherein the sample being measured is between the light source and the camera or capturing location. Each of these claims is ultimately dependant upon either present claim 1 or 12. The allowance of these newly added claims also is respectfully requested.

Alternatively, applicants respectfully request reconsideration and allowance of claims 1-10 and 12, as well as

the allowance of claims 13-20, in view of the significant deficiencies of the Queisser et al patent.

Applicants fail to appreciate how Queisser discloses an apparatus or process for measurement of fruit particles in a matrix. No mention is made in Queisser of fruit particles, much less of fruit particles within a matrix. All of the specific teachings of Queisser are with respect to french fried potatoes. The apparatus and method are provided to detect naturally occurring color deviations, particularly where there is a substantially common hue. See, for example, lines 60-67 in column 2, line 59 of column 6 through line 3 of column 7, and claim 1. There is no suggestion of having the french fries, potatoes, or for that matter any other food, within a matrix.

Applicants' apparatus and method are directed to the difficulties which are encountered when food products, especially fruit pieces, are within a matrix. Besides issues regarding similarity in consistency between the fruit pieces and the matrix, the problem addressed by applicants is compounded by the randomness of having differently sized and shaped fruit pieces or particles distributed within the matrix in a non-ordered manner.

Contrary to this approach of applicants for handling such randomness, Queisser specifically teaches the need for an inspection tray 56 on which the potato pieces to be analyzed are aligned as taught, for example, at lines 20-34 in column 5,

Queisser teaches that the potatoes preferably are aligned transverse, preferable perpendicular to, an alignment axis 57. This teaching of specific orientation may be suitable for individually existing items such as cut potato sticks or french fried potatoes, but this is not suitable for products such as fruit pieces randomly within a matrix, which provides a unitary item to be analyzed and not a series of ordered, individual items.

With more specific reference to the importance of analyzing the fruit particles in a matrix as a unitary item, reference is made to the introductory portions of applicants' description. This addresses the problems of the "fruit retention test," which problems are addressed by the present invention. That test required separation of the fruit particles from the matrix. Were one of ordinary skill on the art to have followed the teachings of Queisser, the result would have been, at best, separating of the fruit particles from the matrix and then placing them onto an inspection tray. This is more akin to the fruit retention test.

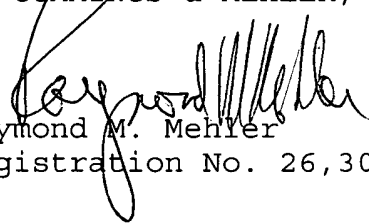
Furthermore, from the nature of the inspection tray of Queisser, a light is not passed through the tray and the product being analyzed. Instead, the light source 20 is between the inspection tray 56 and the camera 22. This teaches away from applicants' claims specifying particulars of the light source and illumination.

Reconsideration of the rejections and the allowance of all of the claims in this application are respectfully requested.

Applicants have made an earnest endeavor to place this application into condition for allowance, and favorable consideration is respectfully requested.

Respectfully submitted,

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